THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

–

WRIT PETITION No.17154 of 2001

DATE:16-08-2005

Between:

D. Omprakash S/o. D. Radhakrishnam Raju,

Hindu, aged about 35 years,

R/o. Obularaju Kandriga village, Vadamalpet Mandal,

Chittoor District.

..... PETITIONER

AND

The Revenue Divisional Officer,

Chittoor, Chittoor District

& two others

.....RESPONDENTS

THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

–

W.P. No.17154 OF 2001

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ORDER:

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a Writ of *Mandamus* declaring the action of the 3rd respondent in disconnecting the power supply to the petitioner's Service Connection No.297 on the directions of respondents 1 and 2 as illegal, arbitrary and the petitioner accordingly prays for issuance of a consequential direction directing the respondents not to interfere with the power supply to the petitioner's Service Connection No.297, in any manner, whatsoever.

The petitioner claims that his father late D. Radhakrishnam Raju, purchased an extent of Acs.21-00 of dry land in Survey No.11/1 of Pudi village, Vadamalpet Mandal, Chittoor District from one Smt. Pudi Lakshmamma W/o. late P. Ranganath Pillai in the year 1983. Thereafter, he developed the said land and raised Mango garden in a portion of the said land. The petitioner's father applied for and obtained electricity supply connection in the year 1990 and has been regularly paying electricity charges.

That the Revenue authorities issued pattadar passbook in the year 1995 in the name of the petitioner's father who applied for issuing title deed in respect of the said land. However, pattadar passbook has been cancelled by order, dated 31-03-1997, on the ground that the land in question does not belong to the vendor from whom the petitioner's father purchased it. The petitioner challenged the same in this Court in W.P. No.8595 of 1997 which was allowed by this Court with a further direction to dispose of the application of the petitioner's father in respect of the land in question within a period of four months from the date of receipt of a copy of that order, dated 01-05-1998. In the meanwhile, the petitioner's father died leaving behind the petitioner, his mother and the sisters. The issue for grant of title deeds pursuant to the directions of this Court was pending before the Mandal Revenue Officer even before filing of this writ petition.

It is unnecessary to go into the controversy as to whether the petitioner is

entitled to grant of any ryotwari patta as is being claimed by him under the provisions of the A.P. Estates (Andhra Area) (Abolition & Conversion into Ryotwari) Act 1948, (for short 'the Act') since the proceedings are stated to be pending before the Commissioner of Land Revenue, A.P. Therefore, no opinion need be expressed on the question of ownership of the land.

The gravamen of the complaint in the instant writ petition relates to action of the Revenue Divisional Officer in directing the Mandal Revenue Officer to take steps for disconnection of power supply to the pump sets installed by the petitioner. The Mandal Revenue Officer accordingly addressed a letter to the Divisional Engineer (Operation),
A.P. Transco, Tirupati for disconnection of power supply to the well and also removal of the electricity lines.

In this writ petition, learned counsel for the petitioner, *inter alia*, submits that neither the Mandal Revenue Officer nor the Revenue Divisional Officer has any such authority to compel or direct the Divisional Engineer (Operation) to disconnect the power supply. That at any rate, power supply could not have been disconnected without putting the petitioner on notice as the petitioner having satisfied the respondents herein obtained the power supply and has been paying the power consumption charges regularly.

Learned standing counsel appearing on behalf of the respondents relying on Clause 42.1 and 42.2 of the terms and conditions of power supply submits that the Divisional Engineer (Operation) is bound to comply with the directions issued by the Mandal Revenue Officer.

Clause 42.1 and 42.2 of the terms and conditions of power supply read as follows:

> *"42.1* ***Disconnection due to eviction:-*** *Where subsequent to commencement of supply of energy by the Board,*

proceedings are initiated under any law for evicting the consumer from the premises to which supply has been given, the S.E. of the Board may discontinue supply of energy to such premises and remove its installations and equipment and its action shall not be liable to be questioned as a breach of agreement or otherwise. He shall without prejudice to the other rights of Board recover from such consumers the expenses incurred for dismantling its installation and removing its equipments.

42.2 ***Disconnection due to non possession of licence/permission.***

*Where the consumer requires a license or permission from any statutory authority or any authority of Govt. to run the business/ industry or permission for lifting of water wherever necessary for purposes of irrigation, or for any other purpose for which he seeks or availing supply of electricity or for locating such business/ industry/ pumpset or any other equipment at the place where he is receiving such supply and where the conduct of his said business/industry/activity at such place becomes un-lawful by reasons of his failure to obtain initially or secure the continuance of such license or permission, the Superintending Engineer of the Board may, if desired by the concerned statutory or any other competent authority of Government, after giving notice calling for explanation and after considering the same discontinue supply without forfeiting the rights of the A.P.S.E. Board under the agreement with the consumer. *Provided that in the cases where specific directions in writing are issued by A.P. Pollution Control Board in exercise of the powers vested with it under Section-33(A) of the Water (Prevention and Control of Pollution) Act 1974, to disconnect power supply to any industrial unit, the concerned Distribution Engineer shall comply with such directions without the necessity of issuance of the notice mentioned in this condition."*

That a plain reading of Clause 42.1 and 42.2 of the terms and conditions of power supply do not lend any support to the contentions urged by the learned standing counsel for the respondents. There are no eviction proceedings, as such, initiated against the petitioner in law. The dispute is whether the petitioner is entitled to grant of ryotwari patta under the provisions of the Act is still

awaiting adjudication. It is not the case of the Divisional Engineer (Operation) that the petitioner or his father, as the case may be, obtained electricity connection by giving any incorrect information or by perpetuating fraud. The petitioner asserts his right, title and interest in the land in question and accordingly on production of the required material in support of his assertion, the competent authority having scrutinized the same granted supply of power. That a dispute may have arisen between the petitioner and the revenue department as to the entitlement of the petitioner to grant of ryotwari patta; it is a different matter altogether. Even without initiating any proceedings for eviction of the petitioner, he cannot be characterized and termed as encroacher within the meaning of Clause 42.1 and 42.2 of the terms and conditions of power supply.

That at any rate, the 3rd respondent could not have acted under the instructions of the Mandal Revenue Officer for disconnection of power supply without putting the petitioner on notice. Had the 3rd respondent put the petitioner on notice, the same would have enable the petitioner to place the relevant material before the

3rd respondent so as to satisfy him that the power connection which he obtained does not suffer from any illegality or infirmities.

Viewed from any angle, I find it very difficult to sustain the action of the 3rd respondent in disconnecting the power supply.

However, it is made clear that supply of power by the

3rd respondent at the request of the petitioner itself does not confer any additional or indefeasible right upon the petitioner and the same shall have no bearing upon the claim of the petitioner and his entitlement for grant of patta under the provisions of the Act. The observations made in this order are confined only to the extent of the impugned action of the

3rd respondent in disconnecting the power supply.

The action of the 3rd respondent in disconnecting the power supply based on the letter of the 2nd respondent – Mandal Revenue Officer cannot be countenanced. In the meanwhile, there shall be a direction to the 3rd respondent not to disconnect the supply of power basing on the letter addressed by the Mandal Revenue Officer. That in case, if the 3rd respondent intends to invoke Clause 42.1 and 42.2 of the terms and conditions of power supply, he shall put the petitioner on notice and pass appropriate orders, in accordance with law.

The Writ Petition is accordingly allowed. There shall be no order as to costs.

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B. SUDERSHAN REDDY, J

Date:16-08-2005.

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